

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT** 20792

Application 29321 of David M. Capik (over)

Box 8, Davis Creek, CA 96108

filed on August 19, 1988, has been approved by the State Water Resources Control Board  
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

1) Unnamed Stream

Linnville Creek thence

North Fork Pit River thence

Pit River

2) Linnville Creek

North Fork Pit River thence

Pit River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
1) North 1,400 feet and East 200 feet from SW corner of Section 5	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	5	44N	14E	MD
2) North 2,500 feet and East 1,200 feet from SW corner of Section 5	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	5	44N	14E	MD

County of Modoc

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Fish and Wildlife Preservation and/or Enhancement						
Recreation						
Stockwatering	Capik Pond Reservoir within SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$	5	44N	14E	MD	
Irrigation	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	5	44N	14E	MD	10
	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	6	44N	14E	MD	20

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 45 acre-feet per annum total to be collected from both sources combined and to be collected from December 1 of each year to March 15 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

The maximum rate of diversion from Linnville Creek (POD No. 2) to offstream storage shall not exceed 2 cubic feet per second. (000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1999. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result

of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Resources Control Board. Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021)

13. Rights under this permit are, and shall be, specifically subject to existing rights determined by the North Fork Pit River Adjudication, Superior Court, Modoc County, No. 4074 insofar as said adjudicated rights are maintained. (0000023)

14. Permittee shall comply with the following provisions which are consistent with the intent of the agreement between permittee and Pacific Gas and Electric Company executed on January 4 and 24, 1992 and filed with the State Water Resources Control Board:

- (1) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the State Water Resources Control Board and Pacific Gas and Electric Company (PG&E), for the purpose of determining water levels in the reservoir.
- (2) Permittee shall record the staff gage reading on or within 5 days following March 16 each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee and by certified letter to PG&E.
- (3) Permittee shall allow PG&E and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)

15. Prior to making a request for license or before license action will be considered by the State Water Resources Control Board, permittee shall consult with the Division of Water Rights and perform an irrigation system evaluation. A report on the evaluation shall be prepared by a person trained or experienced in irrigation system design and management and shall be submitted to the Board for approval.

All cost-effective water conservation measures identified in the irrigation system evaluation report shall be implemented prior to issuance of a license. (000029C)

16. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that

water entering the reservoir which is not authorized for appropriation under this permit may be released. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that an outlet pipe or alternative facility has been installed. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

17. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

18. Permittee shall divert water to storage under this permit only when the flow in the Pit River is sufficient to satisfy Pacific Gas and Electric Company's prior water rights for the Pit 5 Power House. (000F001)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **MAY, 30 1995**

STATE WATER RESOURCES CONTROL BOARD

*Roger Shuman*  
✓ Chief, Division of Water Rights